

February 4, 2003

Honorable Michael Powell  
Honorable Kevin Martin  
Honorable Kathleen Abernathy  
Honorable Michael Copps  
Honorable Jonathan Adelstein  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

Re: *Ex Parte Filing*  
*CC Docket Nos. 01-338, 96-98, and 98-147*

Dear Chairman Powell and Commissioners:

Over the past several weeks, the debate surrounding local switching has been distracted by suggestions that its availability as an unbundled network element should be limited based on the size of the “addressable market” (i.e., the number of access lines served by the incumbent at a particular wire center). This “addressable market” framework is frequently attributed to WorldCom, even though a close reading of the company’s filings makes clear that WorldCom never endorsed such an approach.<sup>1</sup> Given the critical importance of this proceeding – unbundled local switching is now responsible for bringing competitive choice to more than 10 million residential and small business customer lines<sup>2</sup> – it is vital that the Commission not be distracted by *non*-proposals, crafted from mischaracterizations rather than fact. In the discussion that follows, the undersigned carriers explain that:

- \* The Commission should reject *any* rule that restricts access to unbundled local switching based on a measure of “addressable market.” This measure bears no rational, predictable relationship to actual impairment, and thus cannot be used to limit access to unbundled local switching.
- \* There is nothing empirically significant about the 25,000 line threshold referenced by WorldCom. At most, WorldCom merely suggested that 25,000 lines should represent a shift in *fact-finding*

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<sup>1</sup> Letter from Donna Sorgi, WorldCom, to William Maher, Chief, Wireline Competition Bureau, Federal Communications Commission, CC Docket 01-338, 96-98, and 98-147, filed January 8, 2003.

<sup>2</sup> See January 2003 *UNE-P Fact Report*, attached to the letter from Genevieve Morelli to Marlene Dortch, FCC, CC Docket Nos. 01-338, 96-98, and 98-147, filed January 14, 2003.

from the FCC to the States – its analysis did not suggest that the *facts* themselves would support a finding of “no impairment” at this level.<sup>3</sup>

- \* Arbitrarily limiting the availability of unbundled local switching in end-offices larger than 25,000 lines would cripple local competition for residential and small business customers, reducing competition by between 70% and 85%.
- \* Finally, the availability of a so-called “DS0 EEL” does not reduce the economic and operational impairments that today are solved only through access to unbundled local switching.

### **An “Addressable Market” Does Not Measure Impairment**

Throughout this proceeding, entrants have demonstrated that there are (at least)<sup>4</sup> two fundamental “impairments” that unbundled local switching corrects. The first concerns the additional costs and operational impediments that make it impractical to migrate last-mile analog loop facilities to non-integrated (*i.e.*, non-ILEC) switching systems (sometimes labeled the “hot cut impairment”).<sup>5</sup> The second impairment relates to the additional costs and complexities associated with backhaul and transport that are a consequence of the geographic dispersion of mass-market customers and the aggregation inefficiencies that prevent entrants from achieving the necessary line-concentration (*i.e.*, the number of lines any individual entrant serves at a particular end office) to compete without access to unbundled local switching.<sup>6</sup>

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<sup>3</sup> See Letter from Kimberly Scardino, WorldCom, to Marlene Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, and 98-147, dated January 17, 2003 (“WorldCom explained that even in central offices with more than 25,000 residential lines, competitive carriers will be impaired without access to UNE-P until current operational and economic barriers are addressed.”).

<sup>4</sup> It is useful for the Commission to recognize that local competition remains in its infancy and that unbundled local switching has only recently (in the past two years) been made available in a commercially useful form. While it is clear the unbundled local switching *does* allow competition to develop in markets that had not otherwise benefited from competition (namely, the mass market of residential and small business customers), the industry may have not yet discovered all the reasons *why* this is so. Consequently, as the first level of impairment is identified and, in time, hopefully corrected, additional concerns may be revealed. The undersigned carriers continue to believe, however, that with the sustained commitment of competitive entrants and concerned regulators, this industry can be made effectively competitive and deregulated.

<sup>5</sup> Letter from H. Russell Frisby, Jr., CompTel, and Genevieve Morelli, PACE Coalition, to Marlene Dortch, Secretary, Federal Communications Commission, CC Docket Nos. 01-338, 96-98, and 98-147, filed October 31, 2002.

<sup>6</sup> Letter from Access Integrated Networks, et al. to Marlene Dortch, Secretary, Federal Communications Commission, CC Docket Nos. 01-338, 96-98, and 98-147, filed December 11, 2002 (“Traffic Density Letter”). See also Letter from Joan Marsh, AT&T, to Marlene Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, and 98-147, filed January 17, 2003.

Significantly, the underlying size of the “addressable market” does not reliably predict either the scale or the presence of either impairment. The “hot-cut” impairment, for instance, arises with each *individual* line migrated to the entrant’s network. Obviously, the operational and cost consequences of the ILEC’s manual hot cut systems are not alleviated merely because an end office serves a larger “addressable market” – if anything, the problems associated with scalability would be exacerbated in larger end offices, not solved.

As to the second main impairment – the additional costs of backhaul and traffic concentration that entrants must incur, but incumbents do not – addressable market is again unreliable as a measure of impairment. To be sure, the potential addressable market can be *one* factor affecting the line-density achieved by an entrant (i.e., the number of lines actually served by the competitor). However, there is *no generalized relationship* between wire center size and individual CLEC line-density that can be used to measure impairment; thus an “addressable market” theory cannot be used to restrict the availability of local switching.<sup>7</sup>

Although unrelated to a merit-based discussion concerning the unsuitability of the “addressable market” approach, it is important to recognize that the competitive industry is united in its opposition to this approach. This consensus is not weakened by WorldCom’s suggestion that an addressable market measure could be used to define the point at which the more detailed fact-finding capabilities of State commissions should replace those of the FCC – at no time did WorldCom suggest that an addressable market could (or should) be used to limit the availability of unbundled local switching as a network element.<sup>8</sup> Moreover, as shown below, artificially redlining the availability of unbundled local switching based on a 25,000 line threshold would effectively eliminate local competition for mass-market residential and small business customers throughout the nation.

#### **An Artificial 25,000 Line Threshold on Local Competition Would Devastate the Potential for Local Competition**

To determine the effect of a 25,000-line threshold on mass-market competition, two analyses were conducted. The first estimates the actual reduction in UNE-P based competition, based on line distributions obtained through discovery in State-level impairment

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<sup>7</sup> All things being equal, an entrant is likely to gain more lines in a large wire center than a small wire center, but no entrant is assured any particular market share. Because the “addressable market” does *not* track impairment, it simply cannot be used to limit the availability of unbundled local switching.

<sup>8</sup> It is useful to note that WorldCom’s economic analysis only partially addresses total impairment because it only estimates cost differentials between UNE-P and UNE-L without considering the much higher internal costs incurred by an entrant attempting to manage a UNE-L strategy in a mass-market environment.

proceedings.<sup>9</sup> This analysis indicates a *minimum* reduction in UNE-P competition of between 70% (Texas) and 84% (Georgia) – reductions that would effectively eliminate mass-market competition in those States.

**Table 1: Projected Reduction in Actual Competition**

State	Reduction in UNE-P Lines
Georgia	84%
Texas	70%

Significantly, the reductions in actual competition estimated for Texas and Georgia (as shown in the Table above) are representative of the competitive reductions that would be experienced in other States as well. Based on the end-office line information used by the FCC's Hybrid Cost Proxy Model, the following table estimates the reduction in "addressable market" of residential and business access lines that a 25,000-line restriction would entail.

**Table 2: Projected Reduction in Addressable Market**

State	Residential	Business
California	85%	90%
Georgia	76%	84%
Illinois	80%	84%
Indiana	60%	71%
New York	79%	86%
Pennsylvania	61%	72%
Texas	69%	81%
Average	76%	84%

As Table 2 demonstrates, any restriction on the availability of unbundled local switching tied to a 25,000-line criterion would effectively eliminate local competition for residential and small business customers throughout the nation. There is no justification for adopting an "addressable market" based limitation on local switching availability as a general matter, nor is there any support for adopting a specific restriction tied to 25,000 lines in a wire center.

### **The Economics of a DS0 EEL**

The impairments that today require unbundled local switching for mass-market competition are not lessened by access to a so-called enhanced extended link (or "EEL") to

<sup>9</sup> Sources: Texas estimates are from Rebuttal Testimony of Joseph Gillan, Texas Public Utility Commission Docket 24542, based on SWBT's Response to MCImetro's Second Request for Information, RFI 2-1b and 2-6a, October 2001. Georgia estimates are from Rebuttal Testimony of Joseph Gillan, Georgia Public Service Docket 14361-U, based on BellSouth Response to Request No. 1, Access Integrated Networks First Set of Data Requests to BellSouth.

provide analog voice service to residential and small business customers. To begin with, the record is already clear that DS0 EELs substantially increase loop costs, rendering the option an economic nullity.<sup>10</sup> As shown in the December 11<sup>th</sup> letter, use of an analog EEL essentially *doubled* the cost of an analog loop in Zone 1, and effectively precluded any competition in Zone 3 by increasing the cost of an analog loop to more than \$43.00 per month.

A similar analysis sponsored by WorldCom in the Texas UNE-P Arbitration reached the same conclusion:

The bottom line is that EELs [including DS0 EELs] do not represent an economical alternative to purchasing loops in combination with unbundled switching for voice grade customers. Said differently, without access to unbundled switching, business customers with four or more lines will not be able to receive local service from CLECs in any comprehensive way because the economics of EELs for voice grade services – the FCC’s [presumed] alternative to providing access to unbundled switching – is economically cost prohibitive.<sup>11</sup>

In addition, as Eschelon Telecom, Inc. has shown, DS0 EELs are plagued by a number of operational problems that render the option unusable.<sup>12</sup> Throughout this proceeding, a single fact remains clear: Without access to unbundled local switching, local competition for analog mass-market customers – both business and residential – would cease.<sup>13</sup>

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<sup>10</sup> See Letter from Access Integrated Networks, et al., to Marlene Dortch, Secretary, Federal Communications Commission, CC Docket Nos. 01-338, 96-98, and 98-147, filed December 11, 2002 (“December 11<sup>th</sup> letter”).

<sup>11</sup> Direct Testimony of Steven E. Turner, Texas Public Utility Commission Docket No. 24542, page 25.

<sup>12</sup> See Letter from David A. Kunde, Eschelon Telecom, Inc. to Marlene Dortch, Secretary, Federal Communications Commission, CC Docket Nos. 01-338, 96-98, and 98-147, filed October 21, 2002.

<sup>13</sup> This not to say that the industry does not hope that new technologies and loop provisioning systems won’t eventually enable competitors to lessen their reliance on the incumbent. We know, however, that such systems and technologies do not exist today, and will likely never exist if the incumbents successfully eliminates the demand for such systems by eliminating local competition.

Honorable Michael Powell  
February 4, 2003  
Page 6

The Commission must retain local switching as on the national minimum list of network elements – at least for all customers with connectivity less than a DS-1<sup>14</sup> – or the inevitable result will be the reemergence of the integrated Bell monopolies (in a regional form). The Commission should reject any suggestion that an “addressable market” approach is a valid measure of impairment that may be used to redline areas where local switching would not be available.

Sincerely,

AT&T  
Association of Communications Enterprises  
Broadview Networks, Inc.  
Competitive Telecommunications Association  
Eschelon Telecom, Inc.  
Ionex Telecom  
PACE Coalition  
Talk America, Inc.

cc: Christopher Libertelli  
Jordan Goldstein  
Dan Gonzalez  
Matthew Brill  
Lisa Zaina  
William Maher  
Michelle Carey  
Tom Navin

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<sup>14</sup> Such a result would be consistent with the public statements of Chairman Powell that the Commission must be cognizant that the industry is undergoing a massive “analog to digital” migration. *See* Written Statement of Chairman Michael Powell Before the Senate Committee on Science, Commerce and Technology, January 14, 2003, Summary at i (“The theme that binds the agenda is “Digital Migration.”). Implicit in a finding of impairment for analog but not digital loops is the acknowledgement that impairment is more pronounced for legacy analog customers.